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No. 84-1367

In the Supreme Court of the United States

OCTOBER TERM, 1984

RAMIRO M. GUERRA, ET AL.,
Petitioners.

VS.

MARIA CARLOTA GARCIA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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I.

Respondents' Factual Arguments

Respondents have filed their Brief in Opposition to Petitioners' Writ of Certiorari, which Brief contains historical material related to the Lower Rio Grande Valley of Texas. That material not only is completely unsupported by any evidence in the record in this case but also is not a true picture of this area and the people who reside in it. Respondents candidly admit that they never even alleged that Petitioners discriminated against them,

Brief . Opposition at p. 7; however, they present to this Court facts of this nature which have no relevance to the issues in this case.

II.

Respondents' Legal Arguments

Prior to the enactment of H.B. 275[1] by the Texas Legislature in 1975, political subdivisions in Texas could call special elections on almost any day of the year. H.B. 275 mandated that special elections be called and conducted only on one of the four dates specified therein, unless the Governor determined that an emergency existed which required the election to be conducted prior to one of the four dates in a special election to fill an office; in such case the election could be conducted on any earlier date. Section 1c of H.B. 275 set four specific dates for Texas political subdivisions to hold their regular or general elections to elect their officers.

Respondents admit that the United States Attorney General (Attorney General) on December 16, 1975, issued a blanket preclearance of this statute and the four dates contained therein for elections by Texas political subdivisions. (App. J to Petition for Writ of Certiorari at pp. A42-A43). Respondents attempt to qualify the blanket preclearance by referring to certain wording in the Attorney General's 1975 preclearance letter. This wording authorized, as a blanket approval for Texas political subdivisions, all changes which are mandated by H.B. 275, but required additional preclearance in situations where

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1. Reference is to House Bill No. 275, Chapter 715, Section 1, 1975, Tex. Gen. Laws, 2295-2296 (App. I to Petition for Writ of Certiorari at pp. A36-A37) codified as Tex. Elect. Code Ann. Art. 2.01b (Vernon Supp. 1985).

the political subdivision was authorized to make "changes." The Attorney General, as an example of such changes, lists those statutory subsections authorizing the choice to conduct regular elections with other political subdivisions and the choice to change the date of a political subdivision's *regular* elections. This specific preclearance language was construed by a three-judge district court in *Turner v. Fainter*, C.A. No. A83CA35 (W.D. Tex., Feb. 8, 1983) (App. K to Petition for Writ of Certiorari at pp. A44-A46), to permit political subdivisions to conduct special elections on one of the dates specified in Section 2.01b of the Texas Election Code (Vernon Supp. 1985) without further preclearance. The *Turner* court construed the mandatory language contained in sections 1a and 1b of H.B. 275, which sections specify the dates for special elections, as not included in qualifying language such as that contained in the December 16, 1975 preclearance letter.

H.B. 275 *mandates* that elections be held on one of the four dates set therein. In contrast, section 1c allows a political subdivision to elect to "change" the date otherwise set by the statute for the election to another date. The Attorney General's letter states specifically that it is a blanket preclearance for the changes mandated by the amendments, e.g., the change from the holding of special elections on any date to the holding of such elections on one of the four specific dates designated for special elections. The qualification in the Attorney General's letter relates to situations where the statute allows a choice by the political subdivision to take some action contrary to the actions mandated by the statute in absence of such choice, i.e., the "agreement" to hold joint elections pursuant to § 2a or the choice to change the stated date for regular elections pursuant to § 1c. There was no "change" when

the special election was called on one of the four dates specified in section 1a; rather, the election on one of those four dates was mandated by H.B. 275. The situation is directly analogous to that in *Turner* where it was determined that no "change" occurred when, pursuant to section 1b, a *special* election was called on any date prior to the next date specified in section 1a.

The August 22, 1977 preclearance letter (App. O to Petition for Writ of Certiorari at p. A70) addressed only changes in 1977 election dates made pursuant to the amendments to certain sections of the Texas Election Code. There was no change in the four dates for political subdivisions to conduct special elections made by the Texas Legislature in the 1977 amendments. This 1977 preclearance thus did not nullify the previous preclearance of the four dates specified by section 1a for special elections, because the language and dates specified in section 1a were not amended and remained unchanged.

The case cited by Respondents, *National Association for the Advancement of Colored People, et al. v. Hampton County Election Commission, et al.*, ... U.S. ....., 53 U.S.L.W. 4207 (1985) related to the change of the established date of a political subdivision's *regular* election rather than to the holding of a special election on a day previously precleared by the Attorney General.

After reviewing the language contained in the preclearance letters with respect to the pronouncements made by sections 1a, 1b and 1c of H.B. 275 and utilizing the construction made by *Turner*, it is abundantly clear that any qualifying language contained in the Attorney General's 1975 blanket preclearance does not cover special elections

of Texas political subdivisions held on one of the four dates specified in section 1a of H.B. 275.

Respectfully submitted,

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